IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18840 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANGHI INDUSTRIES LTD - Petitioner(s)

Versus

NILA CONSTRUCTION CO - Respondent(s)

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Appearance :

MR PRABHAV MEHTA for M/S.NANAVATI ASSOCIATES for Petitioner(s) : 1,
MR SN SOPARKAR for MR KM PARIKH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 03/03/2006

ORAL JUDGMENT

Rule. Mr.K.M.Parikh, learned Advocate waives service of Rule on behalf of the respondent.

2. This petition, though styled under Article 226 of the Constitution of India, is in fact, a petition under Article 227 of the Constitution. The petition challenges the order dated 1.9.2005 made by the trial Court below Exh.70 in Special Execution Application No.4 of 2004. The principal ground of challenge is that the award made by the Arbitral Tribunal cannot be executed till application under Sec.34 of the Arbitration and Conciliation Act, 1996 has been heard and finally disposed of. Though there is a history regarding filing of application under Sec.34 of the Arbitration Act, coupled with the dispute as to whether said application has been filed in time or not, and whether the said application was filed before the competent Court or not, suffice it to state that it is not necessary to narrate those historical facts and the dispute between the parties for the present purpose. It is an admitted position between the parties that by way of judgment and order made by the High Court of Andhra Pradesh on 21.10.2005 in Civil Revision Petition No.1503 of 2004, the dispute as to the correct Court entitled to hear application under Sec.34 of the Arbitration Act stands resolved and the matter now is to be heard by the City Civil Court, City of Hyderabad. At this stage, a statement on behalf of the petitioner is made that the said

application is listed for hearing on 24th April 2006.

3. Sec.36 of the Arbitration Act specifically stipulates that an award made by the Arbitral Tribunal shall be enforced under the Code of Civil Procedure, 1908 as if it were a decree of the Court, subject to the time for making an application to set aside the arbitral award under Sec.34 of the Arbitration Act having not expired, or such application having been made in time, has been refused. In the judgment referred delivered by the High Court of Andhra Pradesh, it is specifically laid down that the contention whether the application is barred by law of limitation or not is a mixed question of law and fact and cannot form part of adjudication in the revision before the High Court in absence of comprehensive evidence in this regard. The petitioner therein (respondent herein) has been specifically granted liberty by the High Court of Andhra Pradesh to agitate the aspect of limitation before the Civil Court of original jurisdiction.

4. In these circumstances, it is apparent that the entire issue, namely, (i) whether application under Sec.34 of the Arbitration Act is within the period of limitation, and (ii) if yes, whether the same requires to be

refused on merits, is at large before the City Civil Court, Hyderabad.

5. In the result, the impugned order made by the trial Court, cannot be permitted to operate considering the provisions of Sec.36 of the Arbitration Act. The said order is, therefore, required to be quashed and set aside with a direction to the trial Court to keep the said proceedings pending till disposal of the application under Sec.34 of the Act.

6. However, it is an admitted position between the parties that pursuant to an order made by this Court on 9.12.2004 in Special Civil Application No. 5236 of 2004 read with order dated 26.4.2004, the petitioner herein has been directed to deposit 14 cheques with further direction that the cheques so deposited shall be replaced with fresh cheques one week prior to the expiry of the validity period of respective cheques. That, till date, the said arrangement has been continued and the petitioner has been ensuring that the cheques are accordingly replaced within the period of validity of respective cheques.

7. It is an accepted fact that the arbitral award was made on 5th Aug.2002 in relation to principal amount of Rs.83,10,822/- which has

since gone upto Rs.1,44,23,597/- as on 28th Feb.2006, inclusive of interest. The total amount of cheques already deposited in the High Court is Rs.1,19,30,353/-. During the course of hearing, a suggestion was made that the petitioner must replace the cheques so deposited with Bank Guarantee for the total amount due as on 28th Feb.2006. The said suggestion was resisted on behalf of the respondent, while on behalf of the petitioner, it was submitted that the petitioner may be permitted to tender Bank Guarantee to the tune of 50% of the amount while tendering cheques for the balance.

8. Having heard both the sides, the Court does not find it necessary to modify the direction made earlier to deposit the cheques except for the fact that the petitioner shall tender cheques for the differential amount within a period of one week from today and shall continue to abide by the direction to replace the cheques a week prior to the date of expiry of the validity of the cheques till disposal of the application under Sec.34 of the Arbitration Act. The petitioner shall file an undertaking before this Court within a period of one week from today that it shall not seek any adjournment in the pending proceedings before the City Civil Court, Hyderabad and shall cooperate in disposing of the said application at the

earliest.

9. Subject to the aforesaid clarification, the petition stands allowed in the aforesaid terms and stands disposed of accordingly. Rule is made absolute.

(D.A. Mehta, J.)

Sreeram.